

JAMES E. HOWARD LLC
ONE THOMPSON SQUARE
SUITE 201
CHARLESTOWN, MA 02129

TEL (617) 886-9322
FAX (617) 886-9324

August 19, 2005

VIA FEDERAL EXPRESS

Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001

ENTERED
Office of Proceedings

AUG 22 2005

Re: Finance Docket No. 34734
Northeast Interchange Railway, LLC--Lease and Operation
Exemption--Line in Croton-on-Hudson, New York

Part of
Public Record

Dear Secretary Williams:

Enclosed for filing in the above-captioned matter are the original and 10 copies of the "Motion of Northeast Interchange Railway, LLC to Strike 'Supplementary Filing of the Village of Croton-on-Hudson in Support of its Petition to Reject NIR's Notice of Exemption'". Could you please date stamp the enclosed extra copy of the Motion and return it to me in the enclosed self-addressed, stamped envelope?

If you have any questions with respect to this matter, please direct them to me. Thank you very much for your assistance.

Very truly yours,

ENTERED
Office of Proceedings

James E. Howard
James E. Howard

AUG 22 2005

Part of
Public Record

Enclosures
cc: Andreas Y. Gruson

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 34734

original

EAST INTERCHANGE RAILWAY, LLC -- LEASE AND OPERATION
EXEMPTION -- LINE IN CROTON-ON-HUDSON, NEW YORK

MOTION OF NORTHEAST INTERCHANGE RAILWAY, LLC TO STRIKE
"SUPPLEMENTARY FILING OF THE VILLAGE OF CROTON-ON-HUDSON IN
SUPPORT OF ITS PETITION TO REJECT NIR'S NOTICE OF EXEMPTION"

ENTERED
Office of Proceedings

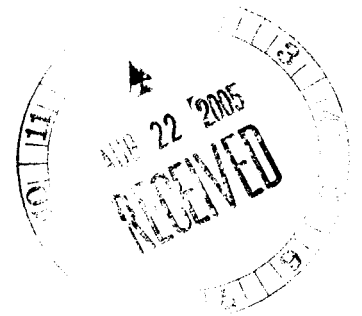
AUG 22 2005

James E. Howard
One Thompson Square
Suite 201
Charlestown, MA 02129
Tel. No. 617-886-9322

Part of
Public Record

Attorney for Northeast Interchange Railway, LLC

Dated: August 19, 2005



BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 34734

NORTHEAST INTERCHANGE RAILWAY, LLC -- LEASE AND OPERATION
EXEMPTION -- LINE IN CROTON-ON-HUDSON, NEW YORK

MOTION OF NORTHEAST INTERCHANGE RAILWAY, LLC TO STRIKE
"SUPPLEMENTARY FILING OF THE VILLAGE OF CROTON-ON-HUDSON IN
SUPPORT OF ITS PETITION TO REJECT NIR'S NOTICE OF EXEMPTION"

Northeast Interchange Railway, LLC ("NIR") hereby requests the Board to strike the "Supplementary Filing of the Village of Croton-on-Hudson in Support of its Petition to Reject NIR's Notice of Exemption" (the "Supplementary Filing"). As demonstrated below, the Supplementary Filing is not permitted by any order of the Board and is specifically prohibited by the Board's procedural rules. Furthermore, the Supplementary Filing is subject to being stricken pursuant to 49 CFR 1104.8, because it contains redundant, irrelevant, impertinent and incorrect information.

In its decision served on August 5, 2005, the Board directed NIR to file a reply to the Petition of the Village. The decision did not permit, either explicitly or by implication, any further filing by the Village. The lack of authority for additional pleadings by the Village is consistent with--indeed, is mandated by--49 CFR 1104.13 (c), which prohibits the filing of a reply to a reply. Although described as a "supplement" to the original Petition, the Supplementary Filing clearly constitutes an impermissible attempt to reply to the response of NIR to the Petition. Therefore, based upon the

decision of August 5 and the Board's procedural rules, the Supplementary Filing must be stricken.

The Supplementary Filing is objectionable and should be stricken on additional grounds as well. Specifically, the Supplementary Filing contains redundant, irrelevant and impertinent matter, all of which is proscribed by 49 CFR 1104.8.

For example, the Village has again attempted to argue, based upon sheer speculation and contrary to the sworn certification and testimony of the Chief Executive Officer of NIR, that the annual revenues of NIR will exceed \$5,000,000 and that the trucking companies that deliver waste material to NIR for rail shipment will not be its customers. Repetition without any basis in fact cannot make the Village's unpersuasive arguments credible.

NIR has projected its revenues based upon the best information that it has available at this time. Moreover, even if NIR could predict the additional rail business that it may be able to generate in the future, there is no question that it will be a Class III carrier. As the Board is well aware, the 60 day notice provision of 49 CFR 1150.32 (e) is intended to facilitate the continued employment of railroad workers in situations where the line that is being transferred has already been operated by a rail carrier. Therefore, even if, contrary to NIR's projections, the annual revenue at the outset of its operations might exceed \$5,000,000, this would be an appropriate case for the Board to waive the 60 day notice provision.

Similarly, the Village continues to dispute whether the license issued by the New York State Department of Environmental Conservation ("DEC") to Metro Enviro can be transferred. In addition to being redundant, this argument is irrelevant, because it does

not bear on the question whether NIR's Notice should become effective. As NIR has previously stated, it will, even though it will be a rail carrier, seek to have an existing DEC permit transferred to NIR, and in any case, operate in compliance with the regulations of the DEC in a spirit of cooperation that other rail carriers have exhibited, at least until state or local regulation prevented them from providing rail service. See, for example, Joint Petition for Declaratory Order--Boston and Maine Corporation and Town of Ayer, Massachusetts, STB Finance Docket No. 33971 (STB served May 1, 2001); Green Mountain Railroad Corp.--Petition for Declaratory Order, STB Finance Docket No. 34052 (STB served May 28, 2002). As demonstrated in the letter dated August 18, 2005, from Andreas Gruson, the Chief Executive Officer of NIR, to the New York State Attorney General's Office ("NYS"), a copy of which is attached as Exhibit A, NIR appreciates the concerns of NYS and DEC and has accelerated the process of consultation with DEC. Furthermore, NIR has expressed its willingness to discuss these issues with the Village, but the Village has thus far rebuffed such attempts, apparently preferring litigation to negotiation. In any event, whether or not the license can be transferred and, if so, on what basis are factors that are not relevant to the questions whether NIR will be a rail carrier and whether it may begin its operations on the basis of the class exemption procedures.

Another example of a redundant, irrelevant and incorrect argument by the Village (Supplementary Filing at 4-5) is its contention that NIR will not be able to operate in accordance with DEC regulations, because those regulations allegedly require "processing" in the form of the removal of "recyclables" from the construction and demolition debris and, according to the Village, NIR does not understand such

regulations to require "processing" other than crushing. It is the Village, however, that does not understand the relevant regulations. The DEC license issued to Metro provides that construction and demolition debris, recyclables and wood may be accepted by Metro and requires Metro to comply with its operation and maintenance manual.

Supplementary Filing, Exhibit C at 6. The DEC permit does not require the separation of recyclables, but Metro's practice, in accordance with its operation and maintenance manual, has been to remove recyclables, in the form of large pieces of metal, from the construction and demolition debris. NIR intends to continue the practice of removing large pieces of metal, because they cannot be readily crushed and thus prevent the efficient loading of rail cars. NIR will, therefore, be in compliance with the DEC regulations and be performing only traditional railroad transloading activities.

The Village goes on at some length and includes voluminous exhibits in an attempt to argue that NIR should not be permitted to begin its rail operations based on certain issues that arose in the past between an entity known as Warren Hills, LLC and the State of Ohio concerning a landfill operated by Warren Hills, LLC in Ohio. This argument is new and therefore does not suffer from redundancy, but it is irrelevant and extremely misleading. Contrary to the inference that the Village would have the Board draw, Warren Hills, LLC is not currently an affiliate of Regus Industries, LLC (NIR's parent), or of NIR. While neither Regus, nor any of its affiliates, ever had an ownership interest in the landfill in question, it divested Warren Hills, LLC, the company that operated the landfill, in July 2004. The stipulation of contempt to which the Village refers was entered in November 2004, and the motion for a hearing to determine penalties was filed in June 2005. Obviously, both of these events occurred well after Regus sold

Warren Hills, LLC. Consequently, the statement that neither Regus nor any of its affiliates has been in contempt of any orders of state or local agencies is accurate. Additionally, the implication by the Village that operation of a former landfill by a former affiliate of NIR's parent has some bearing on NIR's status as a rail carrier simply misses the point.

The Village also misses the point with respect to its arguments concerning spur tracks and 49 U.S.C. 10906. First, contrary to the argument of the Village (Supplementary Filing at 13), NIR has not admitted that a rail line must serve multiple customers. As the Board knows, there are many shortlines that are certified Class III rail carriers and that serve, either initially or over a long period of time, only one customer. Furthermore, the Village fails to understand (Supplementary Filing at 12-13) that even if the NIR line were a spur track, it would not be subject to regulation by state or local authorities, and it would not be immune from the preemptive effect of 49 U.S.C. 10501. Joint Petition for Declaratory Order--Boston and Maine Corporation and Town of Ayer, Massachusetts, STB Finance Docket No. 33971 (STB served May 1, 2001).

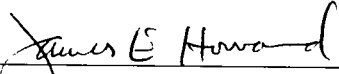
It is timely for the Board to close the record in this matter and permit the Notice to become effective. The Village has enjoyed the benefit of the "housekeeping" stay by which the Board has deferred the effective date of the Notice, and NIR has submitted its response to the Petition of the Village. The record now before the Board permits it to exercise the additional scrutiny requested by the Village even without the Supplementary Filing, which, for the reasons outlined above, should be stricken.

NIR respectfully requests the Board to grant this motion to strike and, more importantly, to move promptly to the issuance of a decision making the Notice effective

and permitting NIR to begin its operations pursuant to the class exemption procedures.
Alternatively, if the Supplementary Pleading is not stricken, NIR respectfully requests an opportunity to file a response to the Supplementary Pleading.

Respectfully submitted,

NORTHEAST INTERCHANGE RAILWAY, LLC



James E. Howard LLC
One Thompson Square
Suite 201
Charlestown, MA 02129
Tel. No. 617-886-9322

Attorney for Northeast Interchange Railway, LLC

Dated: August 19, 2005

Exhibit A

REGUS INDUSTRIES, LLC

2730 Transit Road
West Seneca, NY 14224

Phone: (716) 675-1200

Fax: (716) 675-3996

"Solid Waste Rail Transportation, Logistics & Disposal"

August 18, 2005

Mr. Gordon J. Johnson
Assistant Attorney General and Deputy Bureau Chief
Environmental Protection Bureau
New York State Attorney General's Office
120 Broadway
New York, NY 10271

Via FedEx

Re: Northeast Interchange Railway, LLC

Dear Mr. Johnson:

I have received and reviewed the "Comment" that you filed on behalf of the State of New York ("NYS") and the New York State Department of Environmental Conservation ("DEC") with the Surface Transportation Board ("STB") in connection with the Notice of Northeast Interchange Railway, LLC ("NIR") (a wholly-owned subsidiary of Regus Industries, LLC ("Regus")) to initiate rail operations on a line in Croton-on-Hudson, New York.

I am disappointed in your request for a hearing on this matter, given our previously articulated position that we would seek to have the existing DEC permit transferred from Metro Enviro Transfer, LLC ("Metro") to NIR, and in any case abide by all NYS and DEC regulations regarding the transload operation. Nevertheless, as articulated by Dennis C. Vacco, Vice Chairman of Regus, to you this week, we intend to continue to cooperatively work with your office and the DEC to resolve any outstanding issues. I am writing to reiterate our willingness and interest in continuing our discussions and to address certain of the points made in your filing.

NIR agrees with all of NYS and the DEC's concerns regarding the handling and transloading of waste materials. These concerns and safeguards, as well as the NYS and the DEC's oversight, would be addressed and enforced by means of the existing solid waste permit from the DEC that we intend to transfer from Metro to NIR. Even though it

will be a rail carrier and will have the ability to argue that certain state and local regulations are preempted, NIR intends to perform the transloading in accordance with the DEC permit. To that extent, as you suggested to Mr. Vacco, we will contact Mr. Marc Moran, Regional Director, DEC Region 3, to advance these discussions.

In your Comment, you state that NIR has not submitted operational plans to the DEC. I believe that we have shared NIR's operational plan simply and explicitly: NIR intends to have the DEC permit currently held by Metro transferred to NIR and in any case to transload waste material on NIR's rail lines in compliance with all applicable NYS and DEC regulations.

You raise the issue of state oversight over solid waste operations. We agree that this is important. Based on the transfer of the DEC permit from Metro to NIR, the transloading operation on the rail lines of NIR will continue to be regulated by the DEC, as it is today.

In accordance with 6NYCRR Part 621.13, NIR will shortly be formally submitting the necessary submissions regarding the transfer of Metro's DEC permit to NIR.

You state that NIR has not shared with the DEC what "best management practices and precautionary measures it will implement". These items are spelled out in the Operating & Maintenance Manual that is integral to the DEC permit that NIR will seek to transfer from Metro to NIR.

NIR has been clear in its intentions – operate under the DEC permit. Additionally, NIR has applied for a solid waste license from the Westchester County Solid Waste Commission ("Commission") which governs the solid waste industry in Westchester County. We have been informed by the Commission that at this time, NIR's application for this license is complete, and that all necessary background and other investigations required have been satisfactorily completed.

NIR's proposal is not one of preemption to skirt any environmental regulations. Rather NIR's filings at the STB are to gain authority to operate as a railroad, and to conduct transloading operations as a rail carrier but also under and compliant with DEC and Westchester County environmental laws and regulations.

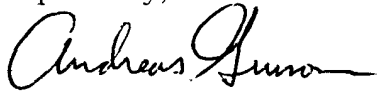
Despite numerous attempts to reach out to the Village of Croton-on-Hudson ("Village") to discuss NIR's proposed rail operation and continuance of the permitted transloading operations, the Village and its counsel Michael Gerrard, have rebuffed all attempts by NIR to meet. If the Village were willing to talk, I am absolutely confident that we could satisfactorily address its concerns regarding infractions of Metro several years ago.

As noted above, NIR wishes to continue to reach out to the DEC and the Attorney General's offices to formalize our commitment to abide by the terms of the existing DEC

permit and to execute a Memorandum of Understanding to that effect. We look forward to talking further with you and resolving any and all outstanding issues.

Please feel free to contact me with any questions. I can be reached at (914)239-3447.

Respectfully,

A handwritten signature in black ink, appearing to read "Andreas Gruson". The signature is fluid and cursive, with a long horizontal stroke at the end.

Andreas Y. Gruson
Chairman and Chief Executive Officer

Cc

Marc Moran, Regional Director, DEC Region 3

Bruce Berger, Executive Director, Westchester County Solid Waste Commission

Dennis Vacco

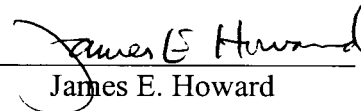
CERTIFICATE OF SERVICE

I hereby certify that this 17th day of August, 2005, I have served the "Motion of Northeast Interchange Railway, LLC to Strike 'Supplementary Filing of the Village of Croton-on-Hudson in Support of its Petition to Reject NIR's Notice of Exemption'" by causing copies to be sent via Federal Express to the following:

Michael B. Gerrard
Arnold & Porter
399 Park Ave.
New York, NY 10022-4690

Marianne Stecich
Murphy Stecich & Powell
828 South Broadway
Tarrytown, NY 10591

Gordon J. Johnson
Assistant Attorney General and
Deputy Bureau Chief
Environmental Protection Bureau
New York State Attorney General's Office
120 Broadway
New York, NY 10271


James E. Howard